

Joint Committee On Ways and Means Subcommittee On Natural Resources

Senate Bill 5529
Budget Presentation
February 27, 2025

<https://www.oregon.gov/luba/Pages/default.aspx>

H. M. Zamudio, Board Chair





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Agency Authority and Mission

Authorized in ORS 197.805 to 197.860.

LUBA is a specialized and neutral appellate review body created by the legislature to

- (1) Provide an accessible forum that expeditiously resolves land use disputes; and
- (2) Publish decisions as a resource to state and local legislators, land use professionals, city and county land use decision makers, property owners, and residents of Oregon.

LUBA is a three-person board of attorneys with significant expertise in land use and appellate law. The three full-time board members are appointed by the Governor and confirmed by the Senate. The board members choose their chairperson.

LUBA diligently resolves land use appeals in a way that is readily understandable and meaningful to the parties, the public, and the courts. LUBA applies the existing law. LUBA is authorized to adopt rules governing LUBA appeal processes. LUBA is not a policy making body.



Guiding Principles

Land use decisions should be consistent with applicable state and local land use planning legislation.

Where there is a dispute concerning whether a land use decision complies with applicable land use planning legislation, that dispute should be resolved efficiently and according to sound principles of judicial review.

This allows land use proposals that comply with the law to go forward without unreasonable delay and allows land use proposals that do not comply with applicable law to be amended or terminated in a timely and efficient manner.



Agency Goals

1. Efficiently resolve land use appeals
2. Thoroughly resolve the issues presented in each appeal
3. Issue quality opinions that are sustained on judicial review
4. Provide quick and easy access to issued decisions
5. Increase understanding of LUBA's mission and processes
6. Provide excellent customer service and a modern case management and filing system
7. Provide equitable access and an inclusive work environment
8. Attract, develop, engage, and retain quality personnel



Land Use Framework

State Legislature

- Sets state land use policies
- Enacts state land use statutes
- Authorizes and funds LCDC, DLCD, and LUBA

LCDC and DLCD

- Adopted Statewide Planning Goals
- Adopts land use administrative rules
- Assists and reviews local government planning efforts

LUBA

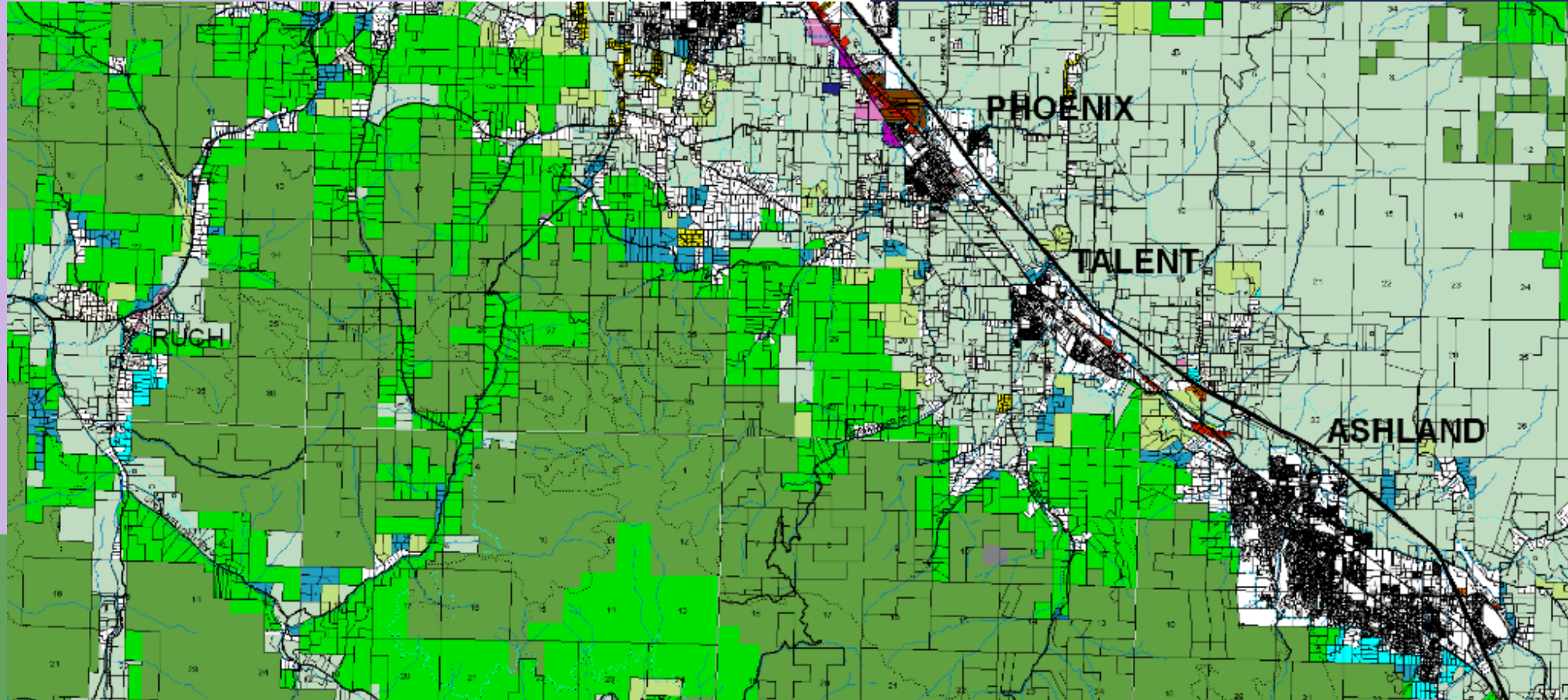
- Reviews land use decisions consistently with principles of judicial review
- Adopts rules governing LUBA review
- LUBA decisions are appealable to the Court of Appeals




























Local Governments

- Planning staff, planning commissions, hearings officers, and governing bodies
- Comprehensive land use planning
- Adopts local zoning ordinances
- Legislative land use decisions
- Quasi-judicial land use decisions

JACKSON COUNTY

COUNTY ZONING (SOUTH)



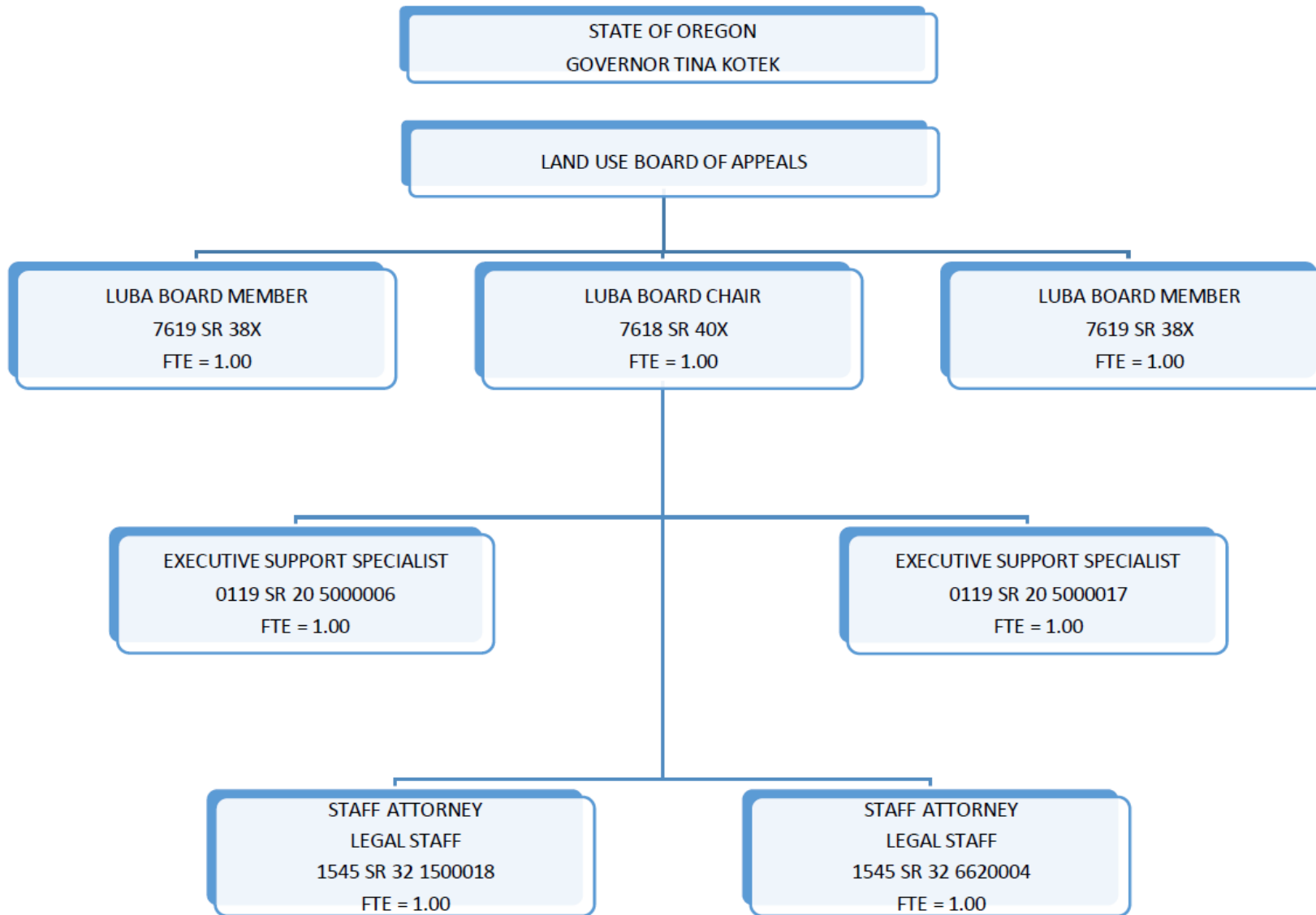
	Aggregate Resource (AR)		Rural Service Commercial (RS)		Urban Residential - 8 (UR-8)		Rural Residential - 10 (RR-10)
	Limited Use (LU)		Applegate Rural Service Commercial (ARS)		Urban Residential - 6 (UR-6)		Rural Residential - 00 (RR-00)
	General Industrial (GI)		Sams Valley Rural Service Commercial (SVRS)		Urban Residential - 4 (UR-4)		Forest Resource (FR)
	Light Industrial (LI)		Ruch Rural Service Commercial (RRS)		Urban Residential - 1 (UR-1)		Woodland Resource (WR)
	Rural Limited Industrial (RLI)		Neighborhood Commercial (NC)		Rural Residential - 2.5 (RR-2.5)		Open Space Reserve (OSR)
	General Commercial (GC)		Urban High Density (UR-30)		Rural Residential - 5 (RR-5)		Exclusive Farm Use (EFU)
	Interchange Commercial (IC)		Urban Residential - 10 (UR-10)		Applegate Rural Residential (RR-5(A))		
	White City Urban Unincorporated Community Boundary		Forest Gibbon Acres & Medford-Phoenix Urban Containment Boundaries		Urban Growth Boundary		Rural Unincorporated Community Boundary

Historical Perspective

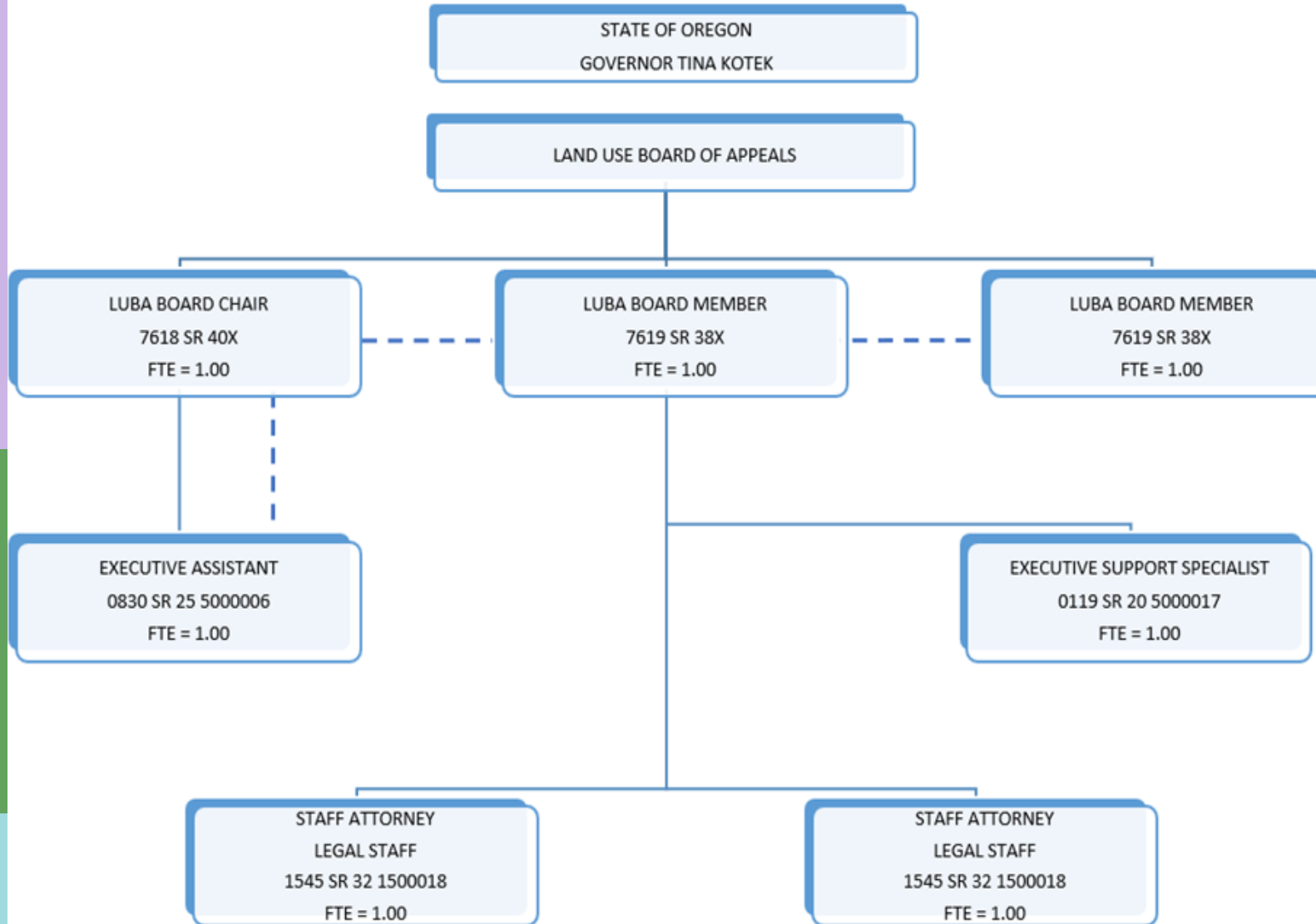


- 1979 Legislature created LUBA with exclusive jurisdiction to review “land use decisions,” which are defined by statute. LUBA appeals replaced writ of review in circuit court.
- Since LUBA was created, there has been a shift to development near urban fringe, with increased conflicts between urban and resource uses and more complex regulations in urban areas.
- De-emphasis on DLCD periodic evaluation and revision of local comprehensive plans. Concurrent shift to complex Post-Acknowledgement Plan Amendments (PAPAs), which are subject to LUBA review.

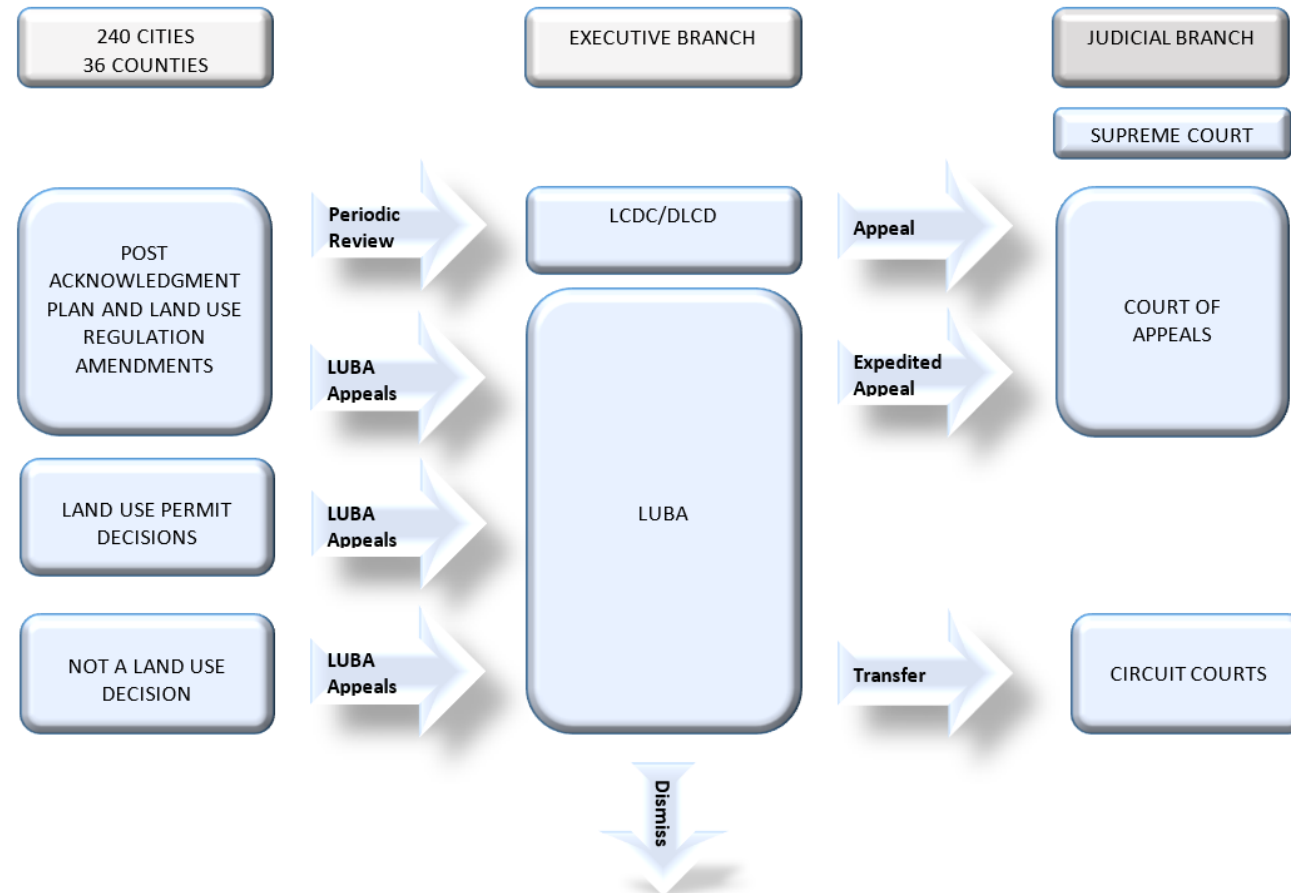
LAND USE BOARD OF APPEALS – 2023-25 ORGANIZATIONAL CHART



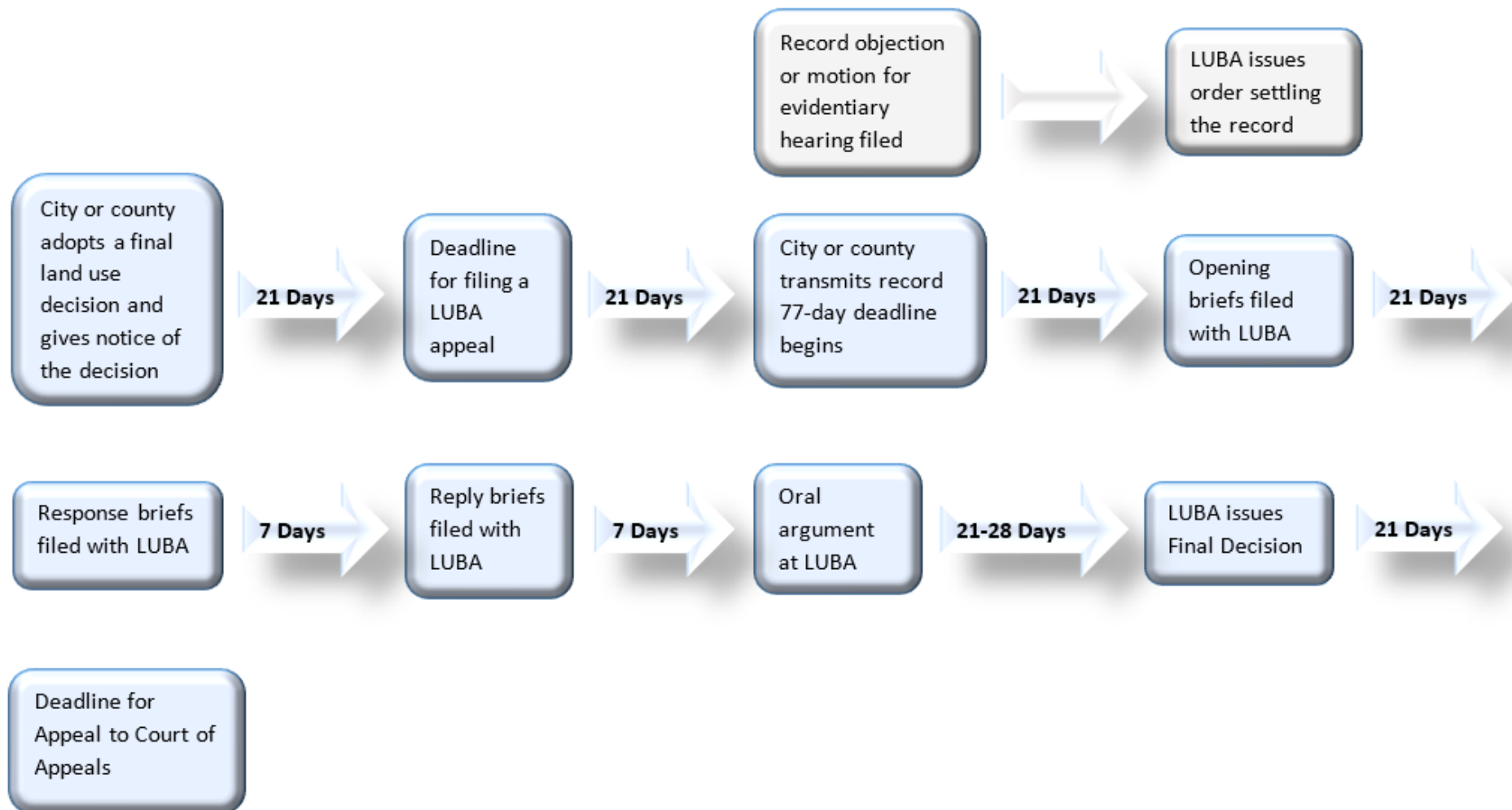
LAND USE BOARD OF APPEALS – PROPOSED ORGANIZATIONAL CHART



LUBA Process Overview



LUBA Process Overview



LUBA Process Overview

LUBA review is fast and efficient:

- Appeal initiating document filed with LUBA
 - Local government record due – **Day 21**
 - Opening briefs due – **Day 42**
 - Response briefs due – **Day 63**
 - Oral argument at LUBA – **Day 77**
 - LUBA issues Final Opinion – **Day 98**
- * * * Circuit Court Review can take between 1 and 5 years**

2023 – 2024 Appeal Data Summary

2023

Filed: 92 new appeals; 22 different cities; 22 different counties

Resolved: 97 appeals resolved

25 Affirmed

31 Remanded

2 Reversed

35 Dismissed

4 Transferred

2024

Filed: 99 new appeals; 19 different cities; 15 different counties and Metro

Resolved: 83 appeals resolved

22 Affirmed

23 Remanded

0 Reversed

36 Dismissed

2 Transferred

Budget Drivers

- **LUBA workload corresponds closely to the overall economy, industry, and population growth. Appeal numbers are high when the economy is strong, low when the economy is in recession, and moderate when the economy is not in recession. 20-year average of approximately 200 appeals per year. Development proposals (and appeals) slow down when development costs are high.**
- **The complexity of appeals and corresponding length of time to correctly resolve appeals varies. New legislation or rulemaking that unsettles the existing legal framework often stimulates appeals.**

Examples:

- Amendments to LUBA review statutes**
- Amendments to housing statutes**
- Amendments to Exclusive Farm Use statutes**

- **LUBA is seeking new investment to modernize its case management and filing system.**

Significant Changes and Challenges 2019-2024

Costs

- Overall costs have increased with inflation.
- Personal services costs increased with pay equity adjustments in 2024.

Personnel

- 2020 shift to DAS for support services for IT, HR, payroll, and financial services.
- COVID 19 pandemic related turnover and staffing challenges in 2020 and 2021.
- Other extended protected leave in 2020, 2021, 2022, and 2023.
- Challenging recruitment and retention environment at all organizational levels (including contract support services personnel). LUBA is currently fully staffed and stable.

Operations

- Transition to hybrid remote office operations
- Strategic Initiative and Enterprise Accountability
- IT Modernization project

Governor's Budget Summary



- **Modified Current Service Level**
 - All funds \$3,498,635
 - General Fund \$3,459,019
 - Other Funds \$39,616
- **Policy Option Packages**
 - 500 IT Modernization \$442,546
 - 101 Reclassification of ESS2 to Executive Assistant \$9,357
 - 104 IT expendable property replacement costs \$13,000
 - 105 Oregon State Bar Dues increased costs \$2,175
- **Total Governor's Budget**
 - All funds \$3,947,545
 - General Fund \$3,907,929
 - Other Funds \$39,616

Policy Option Package

500: IT Modernization (General Fund)

Modernize LUBA's database of appeals and implement electronic case management and filing system

Cost: \$442,546

One-Time Costs:

\$179,972 one-time costs for technology, data migration, and first year licensing and support

\$200,000 initial estimated one-time cost for vendor IT professional services for project management

Ongoing Costs:

\$62,574 for Annual Licensing, Support, and Card Transaction Costs

(payable annually with a not to exceed 6% increase per year)

Quantifying Results: Successful modernization of LUBA's outdated database and implementation of an electronic case management and filing system should result in improved performance across the key performance measures of issuing timely opinions (KPM 1), timely responding to record objections (KPM 2), issuing final decisions that are sustained on appeal (KPM 4), and especially providing good or excellent customer service (KPM 5).

Policy Option Package

101: Reclassification of ESS-2 to Executive Assistant (EA) (General Fund)

Cost: \$9,357

Purpose: LUBA has identified a need for reclassifying a position to manage the agency's operations so that Board Members can focus less time and attention on administrative tasks and more attention on appeals. The reclassification has been approved by DAS Classification and Compensation. Calculation of the POP amount is based on a pay equity analysis conducted after approval.

How Achieved: LUBA has received approval from DAS CHRO for the reclassification and has submitted a Policy Option Package request for the difference in salary.

Staffing Impact: This action does not require any new positions.

Quantifying Results: The Executive Assistant position will enable the Board Chair to delegate management of some administrative and operational tasks so that the Board Chair and Board Members can focus more attention on quickly and correctly resolving appeals. The EA position will be the primary contact for the IT consultant who will manage the agency's IT modernization efforts.

Policy Option Package

104: Computer Replacement (General Fund)

Cost: \$13,000

Purpose: LUBA has \$0 in its 2023-2025 LAB for IT expendable property. LUBA receives IT support from DAS IT, which requires replacement of computers on a 3-year cycle. LUBA last replaced its computers in 2023. LUBA submitted an exception request for funding this budget category at the projected amount for computer replacement during the 2025-2027 biennium.

How Achieved: CFO advised LUBA to seek a Policy Option Package for required computer replacement during the 2025-2027 biennium.

Staffing Impact: None.

Quantifying Results: If the package is approved, LUBA will be able to replace its computers on DAS' required replacement schedule. If the package is not approved, LUBA will be unable to meet DAS' required replacement schedule.

Policy Option Package

105: Oregon State Bar Dues (General Fund)

Cost: \$2,175

Purpose: LUBA's three board members are required to be members in good standing of the Oregon State Bar (OSB). ORS 197.810(3). LUBA's two legal staff are required to have law degrees and preferred to be members in good standing of the OSB. OSB charges annual membership dues, which must be paid to remain members in good standing. The OSB member dues for the three board members and two legal staff total \$7,500 per biennium. For the category Dues and Subscriptions, the general fund line item in the 2023-2025 LAB is \$5,325. Therefore, LUBA will not be able to cover the dues over the 25-27 biennium without additional funds.

How Achieved: CFO advised LUBA to submit a request to increase budget category Dues and Subscriptions by an additional \$2,175 to fully cover OSB dues.

Staffing Impact: None.

Quantifying Results: If the package is approved all LUBA employees who are members of the Oregon State Bar Association will be able to remain in good standing by paying dues.

Policy Option Package

102: Increase Filing Fees (General Fund)

Cost: \$0

Purpose: Currently, the filing fee to appeal a land use decision to LUBA is set in ORS 197.830(9) as \$300. The filing fee for a petition for judicial review/appeal to the Court of Appeals is \$391. The filing fee to intervene in an appeal filed at LUBA is set in ORS 197.830(7) at \$100. LUBA is proposing to increase the appeal filing fee to \$350 and the intervenor filing fee to \$200 to bring LUBA's filing fees more in line with appellate court filing fee and generate a small amount of additional general fund revenue.

How Achieved: See Senate Bill 817.

Proposed Fee Changes

Senate Bill 817 (2025) Amends ORS 197.830

- (1) increases the appeal filing fee from \$300 to \$350;
- (2) increases the intervention fee from \$100 to \$200; and
- (3) removes the requirement that LUBA award the filing fee to the local government when a petitioner fails to file a petition for review.

The appeal filing fee was last adjusted in 2021 from \$200 to \$300, in conjunction with eliminating a \$200 deposit for costs. Prior to 2021, the filing fee was last increased in 2009, from \$175 to \$200. The intervention filing fee was first set by statute in 2009 and has never been increased.

Reduction Options

LUBA is a seven-person agency with 7 FTE. LUBA performs its mission with three board members, two staff attorneys (Legal Staff), one Executive Assistant, and one Executive Support Specialist 2. LUBA has a small and lean budget, the majority of which is for personal services costs. Thus, the only feasible means of reducing LUBA's budget is to reduce personal services costs. The most feasible option to achieve a 5-10% reduction is to reduce or eliminate one Legal Staff position **and** reduce spending on services and supplies.

Proposal 1: Reduce 0.5 Legal Staff position (\$169,679) and reduce spending on services and supplies (\$5,253) Total savings (\$174,932)

Proposal 2: Eliminate one Legal Staff position (\$339,357) and reduce spending on services and supplies (\$10,507) Total savings (\$349,864)

Impact: As a small agency, any staffing reduction would result in delays and decreased performance. If one Legal Staff position is reduced or eliminated, then there will be fewer agency resources for assisting the board members in drafting opinions and orders, editing LUBA decisions, rulemaking, legislative coordination, public outreach and education, and responding to inquiries regarding the appeal process and public records requests. This will likely translate into failing to meet strategic goals and Performance Measures 1 and 2 targets for timely issuing opinions and orders and failing to meet Performance Measure 5 targets for customer service.



Long-term Vacancies

LUBA has no long-term vacancies.

Sample of Efficiency Measures

- Return and do not store local records
- Decrease paper processes when possible
- Accept electronic copies of local records
- Pursuing electronic case management and filing system
- Continually updating and improving agency website
- Continually improving digital data environment
- Publish monthly case summaries
- Provide sample filings on website
- Regularly review subscriptions to ensure that they fit agency needs
- Host law school interns and fellows
- Adopted new administrative notices of noncompliance process, decreasing orders issued by board members on minor procedural errors
- Public records request fee exemptions for items under \$10 – allows for more timely and efficient resolution of public records requests



Program Performance

- Sole program and mission is to efficiently resolve land use appeals.
- For approximately 80% of appeals, LUBA's decision is the final word.
- Approximately 20% of LUBA's decisions are appealed to the Court of Appeals.

Five Key Performance Measures

1. Issue 90% of final opinions within statutory deadlines, or with no more than a 7-day stipulated delay
2. Resolve record objections within 60 days of receipt
3. Decide all legal issues that are presented in appeals
4. LUBA opinions should be sustained on judicial review at least 90% of the time
5. Customer Service Performance (six measurement variables)

KPM 1 – Timely Resolve Appeals

KPM #1 *Proposed Change (see (below)	TIMELY RESOLVE APPEALS - Percentage of appeals of land use decisions that are resolved within statutory deadlines or, if all parties agree, with no more than a 7-day extension of the statutory deadline.				
	Most Recent Data Collection Period: July 1, 2023, to June 30, 2024				
Report Year	2020	2021	2022	2023	2024
Actual	64%	57%	53%	64%	65%
Target	90%	90%	90%	90%	90%

Factors Affecting Results: In the last 10 to 15 years, LUBA appeals have become more complex, and this has resulted in longer decisions being issued by LUBA, which take more time to write, circulate for peer review, and finalize for issuance. Between 2020 to 2023, LUBA faced operational changes, turnover, and prolonged absences due to the COVID-19 pandemic and other protected leave, and difficulty filling vacant positions. LUBA expects that personnel transitions will continue to be more frequent than historically normal for the agency and anticipates that it will not be able to issue more than 60-70% of its final decisions within the current 7-day extension of the statutory deadline currently included in KPM 1.

Proposed Change: Percentage of appeals of land use decisions that are resolved within statutory deadlines or, if all parties agree, with no more than a 21-day extension of the statutory deadline in ORS 197.830(14).

Explanation: LUBA has for the past several years tracked issuance dates for final decisions in connection with KPM 1 performance, and for the final decisions that were issued outside of the target of seven days, a few were issued within three days of the target, and the majority were issued within seven to 21 days of the target. Therefore, LUBA anticipates that it can achieve the target of 90% with a change to KPM 1. Changing KPM 1 to better reflect the changing reality of more complex appeals and more agency personnel turnover will better manage expectations of the parties to appeals. Appeals will continue to be resolved significantly faster than other potential forums.

KPM 2 – Timely Settle Record

KPM #2	TIMELY SETTLE RECORD - Percentage of record objections that are resolved within 60 days after the record objection is received by LUBA.				
	Most Recent Data Collection Period: July 1, 2023, to June 30, 2024				
Report Year	2020	2021	2022	2023	2024
Actual	67%	57%	94%	97%	100%
Target	95%	95%	95%	95%	95%

Record objections suspend briefing deadlines. Timely resolving record objections keeps the appeal moving toward timely resolution.

We are meeting and exceeding the target.

The addition of a second staff attorney in 2022 has helped the agency achieve the target by monitoring record transmissions and record objections and drafting orders.

KPM 3 – Resolve All Issues

KPM #3 *Proposed For Deletion (see below)	RESOLVE ALL ISSUES - Percentage of decisions where all issues are resolved when reversing or remanding a land use decision.				
	Most Recent Data Collection Period: Data Not Collected/No method for collection				
Report Year	2020	2021	2022	2023	2024
Actual	100%	100%	100%	100%	100%
Target	100%	100%	100%	100%	100%

Proposed Change: Eliminate KPM 3

Explanation: Every LUBA decision can be said to resolve all issues presented if the decision is consistent with sound principles governing judicial review set out in statute and case law. LUBA has no automated mechanism or objective measure for tracking KPM 3. Accordingly, LUBA proposes to eliminate KPM 3.

KPM 4 – Sustained on Appeal

KPM #4 (Proposed Renumber To #3)	SUSTAINED ON APPEAL - Percentage of final opinions that are sustained on appeal.				
	Most Recent Data Collection Period: July 1, 2023, to June 30, 2024				
Report Year	2020	2021	2022	2023	2024
Actual	95%	89%	80%	89%	65%
Target	90%	90%	90%	90%	90%

The central goal of speedy resolution of land use disputes is furthered when very few LUBA decisions are appealed to the appellate courts, and most of the decisions that are appealed are affirmed by the courts. Approximately 20% of LUBA decisions are appealed to the appellate courts.

Factors Affecting Results: The last fiscal year presented appeals with several issues of first impression involving the intersection of the land use system, housing development and resource lands, and short-term rental regulation.

*Between July 1, 2024, and January 30, 2025, 13/15 87% of LUBA opinions were affirmed on appeal.

KPM 5 – Customer Service

KPM #5- *Proposed Amendment (see below)	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall, timeliness, accuracy, helpfulness, expertise, availability of information.				
Most Recent Data Collection Period: July 1, 2023, to June 30, 2024					
Report Year	2020	2021	2022	2023	2024
Timeliness					
Actual	92%	No data avail	60%	84%	63%
Target	95%	90%	95%	90%	95%
Expertise					
Actual	88%	No data avail	49%	89%	75%
Target	95%	90%	95%	90%	95%
Accuracy					
Actual	92%	No data avail	77%	83%	75%
Target	95%	90%	95%	90%	95%
Overall					
Actual	92%	No data avail	57%	73%	75%
Target	95%	90%	95%	90%	95%
Helpfulness					
Actual	88%	No data avail	57%	89%	75%
Target	95%	90%	95%	90%	95%
Availability of Information					
Actual	80%	No data avail	53%	73%	63%
Target	95%	90%	95%	90%	95%

KPM 5 – Customer Service

LUBA strives to provide excellent customer service. The nature of adversarial appellate review means that some parties will prevail, and some parties will not. Thus, some parties will not be satisfied with the outcome of an appeal.

Customers

LUBA's customers include land use attorneys and other land use professionals, cities, counties, property owners, developers, public interest organizations, neighborhood associations, other state agencies, and other individuals and organizations interested in particular land use decisions and land use law. LUBA's customers include a wide range of individuals with varying levels of knowledge regarding LUBA, the land use system, and legal proceedings. LUBA is committed to providing quality information, quality decisions, and equitable access to its program and services to all customers.

Customer Service

Excellent customer service is timely, accessible, equitable, and responsive interactions between LUBA and customers. Providing excellent customer service means that LUBA is operating efficiently within the state enterprise and providing high value for the public's investment while providing an accessible forum and diligently resolving land use appeals in a way that is readily understandable and meaningful to the parties and the public.

KPM 5 – Customer Service

Proposed Change: Measuring KPM 5 by attaching survey requests to all email communications from agency staff to members of the public, parties, etc. Respond to an email communication or phone call within 24 business hours of receipt of the communication.

Explanation: Prior to the COVID-10 pandemic, LUBA used returnable postcard customer service satisfaction surveys that were sent to parties to appeals at the time oral argument was scheduled and relied on return of the postcards to measure customer satisfaction. This routinely resulted in the return of five or fewer postcards during the relevant reporting period. This method also failed to capture interactions between support staff and members of the public and other individuals who are not parties to appeals. LUBA now sends a survey link at the end of all email communications that are sent by support staff and legal staff when communicating with anyone, including non-parties to appeals and parties alike. This has resulted in a slightly higher capture rate and more reliable customer service satisfaction data. LUBA proposes to continue measuring customer service satisfaction using this method. LUBA also proposes a metric that requires a response to an email communication or phone call within 24 business hours of receipt of the communication and tracks response times.



Summary

- LUBA is currently fully staffed and in a steady state fulfilling its legislatively directed mission and purpose.
- LUBA is requesting additional funding to modernize its appeal case management and filing system.

Thank you

H. M. Zamudio

LUBA Board Chair

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<https://www.oregon.gov/luba>